

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Creation of a Low
Power Radio Service

To: The Commission

) MM Docket No. 99-25
)
) RM-9208
) RM-9242
)

RECEIVED
AUG 2 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF HOWARD G. BILL

Howard G. Bill (hereafter "Bill") by his attorneys, and pursuant to Section 1.415(b) of the Commission's Rules, 47 C.F.R. §1.415(b), hereby comments on the Notice of Proposed Rule Making ("NPRM"), 14 FCC Rcd 2471 (1999), wherein the Commission proposes to establish rules authorizing the operation of new, low power FM ("LPFM") radio stations.^{1/} In support thereof, Bill respectfully states as follow:

I. Statement of Interest

1. Bill is the majority owner of Broadcast Stations KOLM(AM) and KWWK(FM), Rochester, Minnesota and KLCX(FM), St. Charles, Minnesota. The advent of LPFM is likely to have an adverse economic and/or technical impact on these stations -- audience will

^{1/} The time for filing Comments has been extended to and including August 2, 1999.

No. of Copies rec'd
List ABCDE

0+4

be diluted and interference will likely be caused in the Rochester and St. Charles FM primary and secondary coverage areas. Overall, the listening public in Rochester and St. Charles and vicinities will be profoundly disserved by the creation of a low power FM radio service.

II. Summary of Position

- The Commission should not authorize LPFMs in the absence of clear and convincing evidence that it will not adversely effect the development and implementation of In Band On Channel ("IBOC") digital radio service.
- LPFM must not be permitted to degrade or eliminate existing transmission and reception service to the American listening public.
- LPFM, if authorized, should be confined to reserved channels, where possible, and in any event should be restricted to noncommercial operation as a secondary service.

III. The Merits

A. The Implementation of IBOC Digital Service Is Critical to the Survival of Local Radio Service.

2. America (indeed the world) is in the midst of a communications revolution. The television and cable television industries are converting from analog to digital service. Digital satellite television has made significant inroads in the consumer market. The growth of the Internet is nothing short of astounding. Convergence of all communication technologies is on the horizon and undoubtedly will be achieved early in the 21st Century.

3. Dramatic changes are also taking place in radio communications. The Commission has authorized satellite Digital Audio Radio Service ("DARS"), which will be launched in the next several years. Service competitive to over-the-air radio is also offered on the Internet, on cable, by DCD and by satellite. If local radio service is to be preserved, it is imperative that existing broadcasters convert from analog to digital through an IBOC system.

4. There were over 12,000 radio stations (4,793 AM and 7,679 FM) on the air as of January 1, 1999. On September 28, 1999, the Commission will auction another 144 FM channels to the highest bidder, bringing to a conclusion an eight year freeze on the

disposition of contested FM cases. These off-the-air radio stations must convert to digital operation in order to remain competitive in the 21st Century. The Commission should not -- indeed must not create a new low power FM service in the absence of clear and convincing evidence that it will not adversely effect the transition of existing broadcasters from analog to digital through an IBOC system.

B. The LPFM Proposal Is Patently Inconsistent with Section 307(b) of the Communications Act.

5. Section 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §307(b) provides as follows:

In considering applications for licenses ..., when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several states and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

As noted, the Commission has licensed and as of January 1, 1999, there were operating more than 12,000 radio stations throughout the United States. Each of these stations is licensed to serve a particular community or communities, and thereby fulfills the transmission objectives of the statute. FCC v. Allentown

Broadcasting Corp., 349 U.S. 358, 12 RR 2019, 2021-22 (1955). For some inexplicable reason, in its NPRM (Para. 71) the Commission does not propose to license LPFMs to any particular community. The failure to do so would violate the express terms of the statute and would thereby render nugatory a principal purpose of radio service -- to fulfill the transmission needs of communities.

6. Radio stations fulfill another vital purpose under Section 307(b) of the Act -- to serve the reception needs of their listening audience. An abiding principle, established under administrative and judicial precedent, is that "once in operation a station has an obligation to maintain service to its ... audience, and that the withdrawal or downgrading of existing service is justifiable only if offsetting factors associated with the proposal establish that the public interest will be benefitted." KTVO, Inc., 57 RR 2d 648 (1984); Hall v. FCC, 237 F.2d 567 (D.C. Cir. 1956); Television Corp. of Michigan, Inc. v. FCC, 294 F.2d 730 (D.C. Cir. 1961).

7. Over the past nearly half century, the Commission has been at pains to honor this venerable principle. It has, for example, denied a modification application, which would have resulted in a reduction (Grade A coverage would be withdrawn from an area encompassing 172,361 persons of which 104,364 would lose their only Grade A signal) and loss of television service (a white

area containing 37,912 persons and a gray area containing 5,448 persons would be created). Triangle Publications, Inc., 37 FCC 307, 3 RR2d 37 (1964). Accord: Central Coast Television, 14 FCC 2d 985, 14 RR2d 575 (1968) (television modification application denied inter alia for failure to provide principal city service to the entire community of license and a loss of service to 621 persons and a loss of Grade A service to 36,600 persons.). Community Modifications II, 5 FCC Rcd 7094, 7097, 68 RR2d 644 (1990) ("The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallotting of a channel from one community to another") Accord: FM Channel Assignments (Eatonton, Sandy Springs, GA; Anniston, Lineville, AL), 6 FCC Rcd 6580, 70 RR2d 182, 190 (1991) ("[T]he weight to be accorded the public's expectation [that existing service will continue] is substantial.").

8. The Commission must place in the balance scale the wholesale disruption to listener reception within the primary and secondary coverage areas of existing stations which is likely to occur if it eliminates second and third adjacent channel protection. The Commission should not eliminate such protection in the absence of clear and convincing evidence that existing service will not be diminished or eliminated.

C. If LPFM Is Created, It Should Be Restricted to Noncommercial Operation as a Secondary Service.

9. If the Commission decides to create LPFM, it should be strictly a noncommercial secondary service. Based on Bill's experience in broadcasting, Bill does not believe that mini radio stations operating with 1 kilowatt ERP and maximum antenna heights of 60 meters HAAT could realistically compete with established commercial stations operating with up to 100 kw ERP and antenna heights up to 150 meters HAAT. Throughout the Commission's history, low powered commercial stations have aspired to greater power levels. See, for example, FM Broadcast Stations (Power Increase for Class A Stations), 4 FCC Rcd 6375, 66 RR2d 1473, 1475 (1989). The rationale has typically been that the weaker stations could not effectively compete with higher powered stations. In response to such pleas and, where feasible, the Commission increased Class A stations from 3 kw ERP to 6 kw ERP.

10. On the other hand, many schools and colleges have historically operated low power FM stations for the purpose of serving their campuses and surrounding communities. Since educational and non-profit entities do not have to compete for advertisers, they do not need to be so concerned with the power of

their facilities. And special interest groups, who desire to operate LPFM stations, would be able to satisfy their creative urges without having to compete for advertising dollars with larger, more powerful, better financed stations. LPFM stations, if authorized, should be confined to reserved channels, where possible, and, in any event, should be restricted to noncommercial operation.

11. The Commission also should only authorize LPFM if the new stations are required to (a) protect all existing and proposed full-power and secondary facilities and (b) terminate operations if the LPFM stations cause interference to such facilities. The same rationale should be adopted for LPFM that is expressed in Section 74.1203(a) of the Rules, 47 C.F.R. §74.1203(a). That section requires FM translators, which are secondary stations, to terminate operations if they cause actual interference to (1) the transmission of any authorized broadcast station; (2) the reception of the input signal of any other translator or booster station; or (3) the direct reception by the public of the off-the-air signals of any authorized broadcast station. "Interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the FM translator or booster station, regardless of the quality of such reception, the strength of the signal so used, or the channel on which the protected signal

is transmitted." Ibid. This standard has worked well in the FM translator service, because it protects the listening public's right to hear stations even when the listener is not within the protected contour of the station. LPFM stations, if authorized, should be accorded "secondary" status similar to the status of FM translators.

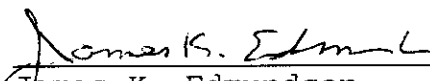
IV. Conclusion

12. The Commission should proceed with utmost caution. It should do nothing which may jeopardize the development and implementation of IBOC digital radio service. It must avert the degradation or elimination of existing transmission and reception service by full service radio stations. LPFM, if authorized at all, should be confined to reserved channels, where possible, and in any event should be restricted to noncommercial operation as a secondary service.

Respectfully submitted,

HOWARD G. BILL

By:


James K. Edmundson
Smithwick & Belendiuk, P.C.
1990 M Street, N.W., Suite 510
Washington, D.C. 20036
(202) 785-2800

August 2, 1999

Certificate of Service

I, Sherry L. Schunemann, in the law office of Smithwick & Belendiuk, P.C., do hereby certify that a copy of the foregoing "Comments of Howard G. Bill" was hand delivered this 2nd day of August, 1999 to the following:

Chairman William Kennard
Federal Communications Commission
445 12th Street, S.W., Room 8-B201
Washington, D.C. 20554

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
445 12th Street, S.W., Room 8-A302
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
445 12th Street, S.W., Room 8-B115
Washington, D.C. 20554

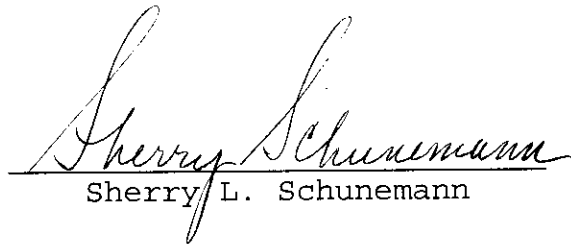
Commissioner Michael Powell
Federal Communications Commission
445 12th Street, S.W., Room 8-A204
Washington, D.C. 20554

Commissioner Gloria Tristani
Federal Communications Commission
445 12th Street, S.W., Room 8-C302
Washington, D.C. 20554

Mr. Paul Gordon
Mass Media Bureau
Federal Communications Commission
445 12th Street, S.W., Room 2C-223
Washington, D.C. 20554

Mr. Bruce Romano
Mass Media Bureau
Federal Communications Commission
445 12th Street, S.W., Room 2-C267
Washington, D.C. 20554

Mr. Keith A. Larson
Mass Media Bureau
Federal Communications Commission
445 12th Street, S.W., Room 2-C420
Washington, D.C. 20554


Sherry L. Schunemann